IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11242 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIMKHAN @ SALIM MALEGAON

Versus

STATE OF GUJARAT

Appearance:

MR MAHESH BHAVSAR for Petitioner

MS MITA PANCHAL, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 03.3.2003 passed by the Police Commissioner, City of Surat, against

him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 03.3.2003.

2. The grounds of detention served upon the detenu petitioner and placed on record reveal that the detaining authority took into consideration two aspects while passing of the order of the detention against the petitioner. Firstly, the registration of three offences against the petitioner on 4th of April, 2002, 30th of March, 2002 and 2nd of February, 2003. The offence Nos. 1 and 2 came to be registered under Sections 379 read with Section 114 of the Indian Penal Code while the last offence came to be registered against the petitioner under Section 395 of the Indian Penal Code and under Section 25(1) of the Arms Act and under the Railway Act. The detaining authority also took into consideration in-camera statements of two witnesses as recorded by the proposing authority on 14.2.2003 and verified by the detaining authority on 26.2.2003. The witnesses have narrated two incidents occurred on 27.1.2003 and 30.1.2003. According to this incident, the petitioner on suspicion that the witness was informant of police was beaten by the petitioner and when crowd gathered around attempted to rescue the witness, the crowd was also threatened by the petitioner, so the public order was disturbed. In the subsequent event, which took place on 30.1.2003, the petitioner alighted from the train and jumped in the vehicle of the witness and on the same day in the evening the witness was threatened by the petitioner on the ground that why the witness did not start his vehicle immediately on boarding the vehicle by the petitioner. The witness was beaten though the crowd was gathered around, but the crowd was threatened by the petitioner and his associates, resulting disturbance of public order. From the above material, the order impugned was passed by the detaining authority.

3. Learned Advocate Mr. Mahesh Bhavsar for the petitioner and learned AGP Ms.Mita Panchal for the respondents were heard. Learned AGP has placed on record the affidavit-in-reply of the detaining authority and Under Secretary to the Government of Gujarat. Both the affidavits were taken into consideration. Learned Advocate for the petitioner contended mainly three grounds. Firstly, in respect of the public order and

according to the learned Advocate from the facts emerges from the grounds, there was no disturbance in public order. The second ground which contended was in regard to the stale cases which were taken into consideration by the detaining authority in arriving at the subjective satisfaction. The third ground was in respect of non-application of mind as to the vital aspect of the matter i.e. when order came to be served upon the petitioner, he was under judicial custody and there was no material that the petitioner was likely to be released on bail.

4. From the rival contentions and going through the record, it clearly appears that the contentions No.1 and 2 raised on behalf of the petitioner about stale cases and about disturbance of public order are meritless. Both the contentions must be rejected from whatever emerges from the record. So far as the third ground is concerned, which is in respect of the non-application of mind by the detaining authority while passing of the order, the contention is based upon the fact that admittedly the petitioner was in the judicial custody when the order came to be passed. Learned Advocate for the petitioner makes a statement that in the said offence which is registered on 31.1.2003, the petitioner is still in the judicial custody and no bail application has been preferred by the petitioner to be released on bail. This contention is vehemently controverted by the AGP on the ground that having considered the seriousness of the offences registered against the petitioner and having regard to the activity of the petitioner, affecting the public at large, as narrated in the ground, after applying proper mind, the order of detention was passed by the detaining authority. But going through the affidavits filed by the detaining authority and from the grounds as placed on record, it clearly transpires that there was no cogent material before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail in a crime registered against him on 31.1.2003. This reveals non-application of mind on the part of the detaining authority as to the vital aspect of the matter. The facts of the case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL & ORS. vs. UNION GOVERNMENT, THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675, the order impugned in this petition therefore is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in

this Special Civil Application passed by the Police Commissioner, Surat, on 3.3.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair